S.B.Civil Revision Petition No.11/2007.

Gandhi Vidhya Mandir.
vs.
Babulal and another.

Date : 23.2.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr. KR Saran for Mr.Sajjan Singh, for the petitioner.

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Heard learned counsel for the petitioner.

The petitioner is aggrieved against the order dated 27.9.2006 by which the petitioner's application for setting aside the order of dismissal of regular first appeal was dismissed by the first appellate court after rejecting the application filed under Section 5 of the Limitation Act.

It is submitted by learned counsel for the petitioner, that the petitioner filed suit for cancellation of patta which is alleged to have been issued in favour of respondent Babulal for the land in question. The suit was dismissed by the trial court vide judgment and decree dated 9.2.2001. The petitioner preferred regular first appeal but it was barred by 45 days, therefore, an application was submitted by the

petitioner along with regular first appeal for condonation of delay. In the application, it is mentioned that Shri Ramswaroop, Registrar of the petitioner – registered cooperative society, was sick from 20.3.2001 to 10.5.2001 and, therefore, the appeal could not be preferred. However, no medical certificate was produced by the petitioner in support of sickness of said Registrar.

It is shocking that in the application itself, it is mentioned that the Registrar continued to attend the office and was doing all the work of the society which he thought to be urgent. It is also admitted case that the said Registrar attended the office for entire period of three months but he did not thought that the filing of the appeal in a matter relating to immovable property was more important and urgent and this continued for three months which is apparent from the fact that the suit was dismissed by the trial court on 9.2.2001 and the appeal was preferred in the month of May, 2001 despite the fact that certified copy of judgment and decree was delivered to the petitioner on 23.2.2001.

In view of the facts mentioned above, it is clear that it is not a case of disclosing any sufficient reason for condonation of delay but virtually it is a

case of gross negligence as well as the total irresponsible way of working of the Registrar of the petitioner.

In view of the above reason, the submission of learned counsel for the petitioner that in a matter of litigation relating to immovable property, in condonation of delay, liberal view should be taken by the Court in the light of the decision of the Hon'ble Supreme Court in the case of Divisional Manager, Plantation Division, Andaman & Nicobar Islands vs. Munnu Barrick and others reported in (2005) 2 SCC 237, is liable to be rejected.

It may be observed that in the matter of condonation of delay, a liberal view is taken so as to do justice with the parties but it cannot be stressed to causing injustice to the other party.

In view of the above, this revision petition, having no force, is hereby dismissed.

The petitioner Society, if has suffered any loss, is free to take action against the said Registrar.

(PRAKASH TATIA), J.

S.Phophaliya